MICHIGAN SUPREME COURT

Office of Public Information

contact: Marcia McBrien | (313) 972–3219 or (517) 373–0129

FOR IMMEDIATE RELEASE

FREEDOM OF INFORMATION ACT SUITS AGAINST STATE UNIVERSITIES TO BE HEARD BY MICHIGAN SUPREME COURT IN ORAL ARGUMENTS THIS WEEK
State News seeks police report in 2006 MSU dorm assault; MSU asserts privacy exemption
University of Michigan asserts privacy exemption shields home addresses, phone numbers of some university employees from union's FOIA request

LANSING, MI, March 3, 2008 – A newspaper's Freedom of Information Act lawsuit against Michigan State University will be heard by the Michigan Supreme Court in oral arguments this week.

At issue in *State News v Michigan State University* is whether the university properly refused the newspaper's FOIA request for a police incident report that detailed an assault in a university dormitory room. The university argues that the report is exempt from disclosure under the FOIA privacy and the law enforcement purposes exemptions. A circuit judge agreed and dismissed the newspaper's suit, but the Court of Appeals reversed, concluding that the trial judge erred in finding that the entire report was exempt. On remand, the Court of Appeals said, the trial judge should determine which parts of the report were subject to FOIA and release that information to the State News, and should also consider whether the passage of time, and the status of the criminal investigation into the assault, affected the "personal nature" of public records. The university challenges that ruling.

The FOIA privacy exemption is also at issue in *Michigan Federation of Teachers v University of Michigan*, another case that the Court will hear this week. The Michigan Federation of Teachers challenges the university's refusal to provide home addresses and phone numbers of university employees who declined to have the information published in a university faculty and staff directory. The university asserted FOIA's privacy exemption, which shields from disclosure information "of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy." In the lawsuit, various university employees gave affidavits citing personal safety and other concerns to support keeping their home information from being publicly disclosed. But the Michigan Court of Appeals, citing a 1997 Michigan Supreme Court ruling, held that home addresses and telephone numbers were not items of personal information under FOIA because they did not reveal "intimate or embarrassing details of an individual's private life." One judge on the appellate panel suggested that the rise of identity theft and Internet resources might be considered in determining whether disclosure of home addresses and phone numbers is inconsistent with the "customs, mores, or ordinary views of the community."

The remaining 11 cases concern tax, zoning, evidence, foreclosure, no-fault, procedural, and criminal law issues.

Court will be held on **March 4, 5, and 6** in the Supreme Court's courtroom on the sixth floor of the Michigan Hall of Justice in Lansing. Oral arguments will begin at **9:30 a.m.** each day.

(*Please note: The summaries that follow are brief accounts of complicated cases and may not reflect the way in which some or all of the Court's seven Justices view the cases. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of their cases. Briefs in the cases are available on the Supreme Court's web site at* http://www.courts.michigan.gov/supremecourt/Clerk/msc_orals.htm. *For further details about the cases, please contact the attorneys.*)

Tuesday, March 4
Morning Session

DAIMLERCHRYSLER v STATE TAX COMMISSION, et al. (case nos. 133394, 133396, 133400-133406)
Attorneys for petitioners DaimlerChrysler Corporation and Detroit Diesel Corporation: Carl Rashid, Jr., Michael F. Smith/(313) 225-7000
Attorneys for petitioner Ford Motor Company: Jeffrey A. Hyman, Stewart L. Mandell/(313) 465-7422
Attorneys for respondents State Tax Commission and Department of Environmental Quality: Ross H. Bishop/(517) 373-3203, John Fordell Leone/(517) 373-7540
Attorney for respondent City of Auburn Hills: Derk W. Beckerleg/(248) 851-9500
Attorneys for intervening respondent City of Dearborn: William H. Irving, Debra A. Walling/(313) 943-2035
Trial courts: Oakland, Wayne, and Washtenaw County Circuit Courts
Link to briefs:
http://www.courts.michigan.gov/supremecourt/Clerk/03-08/133394/133394-Index.htm
At issue: These consolidated cases involve three taxpayers' applications for state tax exemption certificates under Part 59, MCL 324.5901 *et seq*., of the Natural Resources and Environmental Protection Act. Ford Motor Company, DaimlerChrysler Corporation and Detroit Diesel Corporation installed "test cell" facilities to sample exhaust emissions from vehicles during the design and manufacturing process in order to comply with federal emissions standards. Detroit Diesel also built a new plant to manufacture engines that meet recently implemented federal emission standards for diesel engines. Do these facilities qualify for tax exemption as pollution abatement facilities?
Background: These consolidated cases involve three applications for state tax exemption certificates under Michigan's air pollution control laws. Ford Motor Company, DaimlerChrysler Corporation, and Detroit Diesel Corporation installed "test cell" facilities, which are designed to sample vehicles' and engines' exhaust emissions during design and manufacture. Ford, DaimlerChryslyer, and Detroit Diesel applied for tax exemption certificates from the State Tax Commission under Part 59 of the Natural Resources and Environmental Protection Act, MCL 324.5901 *et seq*., which permits certain property, sales and use tax exemptions for facilities that

reduce air pollution. Detroit Diesel also sought a tax exemption for its new engine manufacturing facility. As required by Part 59, the State Tax Commission referred the request to the Michigan Department of Environmental Quality, which concluded that none of the facilities qualifies for exemption under Part 59. The primary purpose of the test cell facilities is to enable the taxpayers to sell their vehicles by complying with federal law, not to reduce pollution, MDEQ found. In addition, to qualify for the exemption, a facility must physically remove or control pollution, whereas the test cells actually generate some pollution during testing, MDEQ said. The State Tax Commission agreed, denying all exemption requests. In several separate actions, the companies appealed to various circuit courts. Ford's four exemption denials were reversed; the denials for DaimlerChrysler and Detroit Diesel were affirmed. Ultimately, the Court of Appeals consolidated all appeals from the lower court rulings and held in a published decision that tax exemption certificates must be issued for all the test cell facilities. The test cells' primary purpose is to reduce pollution, and the facilities need not physically or directly reduce pollution in order to qualify for the statutory tax exemption, the appellate court said. But MDEQ properly denied Detroit Diesel's exemption request for its engine plant, because that facility's primary purpose was not to reduce pollution, but to manufacture engines for sale, the Court of Appeals stated. MDEQ and the State Tax Commission jointly appeal the Court of Appeals' decision; Detroit Diesel has cross-appealed. The cities of Dearborn and Auburn Hills have also appealed to protect their interests as the affected taxing authorities.

STATE NEWS v MICHIGAN STATE UNIVERSITY (case no. 133682)
Attorneys for plaintiff State News: Herschel P. Fink, Brian D. Wassom/(313) 465-7400
Attorney for defendant Michigan State University: Theresa Kelley/(517) 353-3530
Attorney for amicus curiae Michigan Association of Broadcasters and Michigan Press Association: Katherine W. MacKenzie/(734) 416-1780
Attorney for amicus curiae Prosecuting Attorneys Association of Michigan, the Michigan Sheriffs' Association, and the Michigan Association of Chiefs of Police: Stuart J. Dunnings, III/(517) 483-6108
Attorney for amicus curiae the Regents of the University of Michigan, Central Michigan University Board of Trustees, the Board of Regents of Eastern Michigan University, Board of Trustees of Ferris State University, Michigan Technological University, the Board of Control of Northern Michigan University, the Board of Trustees of Oakland University, Board of Governors of Wayne State University, and Board of Trustees of Western Michigan University: Debra A. Kowich/(734) 764-0304
Trial court: Ingham County Circuit Court
Link to briefs:
http://www.courts.michigan.gov/supremecourt/Clerk/03-08/133682/133682-Index.htm
At issue: The defendant university denied the plaintiff newspaper's Freedom of Information Act request for a police incident report that detailed an assault in a university dormitory room. Did the university meet its burden of demonstrating that the requested report was exempt from disclosure under both the FOIA privacy exemption, MCL 15.243(1)(a), and the law enforcement purposes exemption, MCL 15.243(1)(b)? Did the Court of Appeals err in instructing the trial court regarding the "personal nature" of public records covered by the FOIA privacy exemption or the law enforcement purposes exemption, including whether the "personal nature" of such records may be affected if some or all of the information becomes public?
Background: On March 2, 2006, the State News made a Freedom of Information Act request to

Michigan State University, asking for a "police incident report" concerning an alleged assault in an MSU student dormitory; three men were arrested in connection with the incident. The university denied the FOIA request, citing FOIA's privacy and law enforcement purposes exemptions. The privacy exemption, MCL 15.243(1)(a), protects from disclosure information of a personal nature "if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy." The relevant sections of the law enforcement exemption, MCL 15.243(1)(b), protect from disclosure investigating records that are compiled for law enforcement purposes, but only if their "disclosure as a public record would do any of the following: (i) Interfere with law enforcement proceedings. (ii) Deprive a person of the right to a fair trial or impartial administrative adjudication. (iii) Constitute an unwarranted invasion of personal privacy. . . ." The State News sued MSU, seeking a court ruling that would compel the university to provide the incident report. But the trial court dismissed the newspaper's complaint, holding that MSU had met its burden of demonstrating that the requested report was exempt from disclosure under both the privacy and law enforcement exemptions. In a published decision, the Court of Appeals reversed and remanded the case to the trial court, concluding that the trial court erred in finding that the entire report was exempt. On remand, the trial court was to view the report in chambers, determine whether there are nonexempt portions of the report that could be separated from the exempt material, and release the nonexempt portions to the newspaper, the Court of Appeals directed. The trial court should also consider the impact of the passage of time, and the current status of the investigation, in determining whether any part of the report was exempt from FOIA disclosure, the appellate panel said. MSU appeals.

WHITE v TAYLOR DISTRIBUTING COMPANY, INC., et al. (case no. 134751)
Attorney for plaintiffs Sherita White and Derrick White: Mark R. Granzotto/(248) 546-4649
Attorneys for defendants Taylor Distributing Company, Inc., Penske Truck Leasing Company, L.P., and James J. Birkenheuer: John P. Jacobs, Timothy A. Diemer/(313) 965-1900
Attorney for amicus curiae Michigan Defense Trial Counsel, Inc.: Hal O. Carroll/(248) 312-2800
Trial court: Oakland County Circuit Court
Link to briefs:
http://www.courts.michigan.gov/supremecourt/Clerk/03-08/134751/134751-Index.htm
At issue: The plaintiffs sued the defendant driver for driving negligently and causing an accident. The driver testified at his deposition that the accident resulted from the sudden onset of a medical condition that caused him to faint. The defendants moved to dismiss the case under the sudden emergency doctrine, relying on the driver's deposition testimony and arguing that he did not act negligently. The plaintiffs presented no countervailing evidence, but argued against summary disposition. Should the defendant's motion be denied on the ground that judgment is not appropriate under MCR 2.116(G)(4)?
Background: Sherita White was injured when a tractor-trailer driven by James J. Birkenheuer rear-ended her vehicle on the exit ramp at Novi Road and I-96 in Oakland County. White and her husband sued Birkenheuer, his employer, and the truck leasing company, claiming that she sustained serious injuries as a result of Birkenheuer's allegedly negligent driving. Birkenheuer testified at his deposition that he had been overcome with gastrointestinal distress and dizziness and passed out as he was attempting to slow the truck on the exit ramp. Based on this testimony, the defendants moved for summary disposition, arguing that Birkenheuer experienced a "sudden

emergency" and that his response to that sudden emergency was not negligent. The accident report and medical records tended to corroborate Birkenheuer's testimony. The plaintiffs did not present countervailing evidence to the trial court, but they argued that summary disposition was nevertheless inappropriate. Birkenheuer's motive and intent were at issue, and his credibility was critical to the case, the plaintiffs argued. The trial court granted the defendants' motion for summary disposition and dismissed the case. But the Court of Appeals reversed in a split, published opinion. Once a moving party presents evidence to show that summary disposition is appropriate, the non-moving party is obligated to rebut the moving party's case with documentary evidence, the majority acknowledged. However, MCR 2.116(G)(4) provides that judgment should be entered only "if appropriate," the majority said. The majority concluded that it would be virtually impossible for the plaintiffs to refute Birkenheuer's testimony, and that the questions of sudden emergency and negligence involve an assessment of his credibility. Under the circumstances, the majority held, summary disposition was "inappropriate" under MCR 2.116(G)(4). The dissenting judge would have affirmed summary disposition for the defendants, based on the plaintiffs' failure to present any countervailing evidence to rebut Birkenheuer's testimony. The defendants appeal.

Afternoon Session

MANUEL v GILL, et al. (case no. 131103)
Attorney for plaintiffs Iskandar Manuel, Maggie Manuel, Jimmy Manuel, Joseph Manuel, Imad Manuel, and Adel Manuel: Kevin L. McAllister/(517) 614-8953
Attorneys for defendants Timothy J. Gill, County of Clinton, County of Eaton, Rusty Banehoff, County of Ingham, Eaton County Sheriff, Clinton County Sheriff, Kenneth Knowlton, Lansing Chief of Police, City of Lansing, Lansing Police Commission, Jimmy Patrick, and Ingham County Sheriff: Patrick A. Aseltyne/(517) 886-3800, John R. McGlinchey/(517) 372-9000
Attorney for defendant Tri-County Metro Narcotics Squad: Ann M. Sherman/(517) 373-6434
Trial court: Ingham County Circuit Court
Link to briefs:
http://www.courts.michigan.gov/supremecourt/Clerk/03-08/131103/131103-Index.htm
At issue: The Court of Appeals held that the Tri-County Metro Narcotics Squad is similar to a state agency and must be sued in the Court of Claims. In light of the statement in the Court of Appeals judgment that a breach of contract action against TCM was possibly viable in the Court of Claims, is TCM an aggrieved party entitled to appeal, despite the Court of Appeals' affirmance of the circuit court's grant of summary disposition on all grounds? Did the Court of Appeals err in ruling that TCM is equivalent to a state agency?
Background: The Tri-County Metro Narcotics Squad is a task force, composed of various law enforcement agencies, that was created to enforce narcotics and controlled substances laws in Michigan. Each participating police agency assigns officers to the squad, which operates under the Michigan State Police's direction. In 1999, Iskandar Manuel, who with his family owned a car dealership in Lansing, agreed to assist with an undercover investigation after squad members assured him that his identity would not be disclosed and that the squad would reimburse him for any expenses or losses that the family business incurred. Manuel thereafter advised the squad of planned drive-by shootings, drug deals, and other criminal activities. In addition to putting

surveillance equipment in the Manuels' residence and business, the squad attached tracking devices to cars that the dealership sold to suspected drug dealers. One squad officer allegedly disclosed the Manuels' cooperation to targets of the investigation; the Manuels claim that they received threats as a result. The Manuels sued the squad and other defendants in circuit court. In part, they claimed – based on the squad's alleged representations that the Manuels would be reimbursed for expenses and business losses – that the squad had breached an express or implied contract. But the circuit court granted the squad's motion for summary disposition and dismissed the breach of contract claim. Although the squad was an entity that could be sued, the Manuels pleaded their claim "in the most conclusory" terms and no writing existed establishing the terms of the alleged contract, the court said. The contract claim must be dismissed, the trial court said, since the statute of frauds – a legal doctrine that requires that certain types of contracts be in writing – barred any oral agreement. In a published opinion, the Court of Appeals affirmed. The Court of Appeals agreed with the trial court judge that the squad is a "juridical entity capable of being sued." But the squad is "equivalent to a State agency" because the State Police directed and supervised the squad, the Court of Appeals determined. Accordingly, the squad could only be sued in the Court of Claims, the appellate panel said. The squad appeals.

PEOPLE v BLACKSTON (case no. 134473)
Prosecuting attorney: B. Eric Restuccia/(517) 373-4875
Attorney for defendant Junior Fred Blackston: Patrick K. Ehlmann/(517) 324-9577
Attorney for amicus curiae Prosecuting Attorneys Association of Michigan: Timothy A. Baughman/(313) 224-5792
Trial court: Van Buren County Circuit Court
Link to briefs:
http://www.courts.michigan.gov/supremecourt/Clerk/03-08/134473/134473-Index.htm
At issue: The defendant was convicted of first-degree murder. His motion for a new trial was granted, and a second trial also resulted in a conviction for first-degree murder. In between the two trials, two important witnesses provided written statements recanting the testimony they gave in the first trial. In the second trial, their testimony from the first trial was admitted because both witnesses were "unavailable." But the trial court ruled that their written statements were inadmissible to impeach their testimony from the first trial. The Court of Appeals concluded that the trial court erred, that the error was not harmless, and that the defendant was entitled to a new trial. Did the trial court properly exclude the two witnesses' inconsistent statements? Did the Court of Appeals apply the correct standard of review? Is the defendant entitled to a new trial?
Background: Junior Fred Blackston was convicted of first-degree murder in 2001 for a 1998 killing. For reasons unrelated to his appeals, he received a new trial in 2002. Following the first trial, two important witnesses – an accomplice who was given immunity in exchange for his testimony, and Blackston's former girlfriend and mother of his children – gave written statements recanting their testimony from the first trial. In the second trial, both witnesses were found to be "unavailable" due to unwillingness to testify and alleged memory problems, and their testimony from the first trial was admitted into evidence. But the court found that the witnesses' written statements were inadmissible and could not be used to impeach their testimony from the first trial. The 2002 trial resulted in Blackston again being convicted of first-degree murder. He sought a new trial, arguing that the trial court abused its discretion in failing to admit the written statements under Michigan Rule of Evidence 806. MRE 806 provides that a statement's credibility can be attacked or supported "by any evidence which would be admissible

for those purposes if declarant had testified as a witness." In 2005, the Court of Appeals agreed with Blackston and reversed the trial court, remanding the case to the trial court for another new trial. The prosecutor appealed to the Supreme Court, which vacated the Court of Appeals judgment and remanded the case to that court for reconsideration of "the issue whether the trial court's error, if any, in excluding the statements in question was harmless beyond a reasonable doubt." On remand, the Court of Appeals concluded in an unpublished opinion that the error was not harmless beyond a reasonable doubt. The appellate court said it could not "say with confidence that defendant would have been convicted of first-degree murder if the court had let in the impeaching evidence, as it was obliged to do." The appeals court again reversed and remanded for a new trial. The prosecutor appeals.

ORAM, et al. v ORAM, et al. (case no. 134670)
Attorney for plaintiff Latif Z. Oram a/k/a Randy Z. Oram: Reginald M. Turner, Jr./(313) 965-8300
Attorney for defendant John Oram: Gordon I. Berris/(248) 557-6995
Attorney for defendant Gary Oram: Satch U. Ejike/(248) 547-7313
Trial court: Oakland County Circuit Court
Link to briefs:
http://www.courts.michigan.gov/supremecourt/Clerk/03-08/134670/134670-Index.htm
At issue: The plaintiff's attorney failed to appear on a scheduled trial date, claiming to be medically incapacitated. When the trial was rescheduled, he appeared in court, but again claimed that he was not fit to proceed; the trial court then dismissed the plaintiff's case with prejudice. Did the Court of Appeals properly affirm the circuit court's dismissal of the plaintiff's lawsuit? Was the dismissal order a "verdict" for purposes of ordering case evaluation sanctions?
Background: Latif "Randy" Oram and his brothers, John and Gary Oram, together owned and operated several businesses. John and Gary sued Randy over a business dispute; Randy counterclaimed. John and Gary's claims and Randy's counterclaim were dismissed, and Randy appealed. While the appeal was pending, the parties entered into a settlement agreement whereby Randy was to be paid $1,650,000 as a "make up payment," using funds from certain family-owned businesses. Randy later sued John and Gary, contending that they had breached the settlement agreement by taking assets out of the family businesses, leaving them unable to pay him. The trial court ruled that John and Gary were not personally liable to pay Randy the make up payment. Trial was adjourned several times and was finally set for November 15, 2005. On the morning of trial, Randy's counsel, James Shaw, did not appear, but a substitute attorney brought a note from Shaw's doctor, stating that Shaw was medically incapacitated. The trial court then set trial for November 17, 2005, and ordered that if Randy and Shaw did not appear prepared to proceed with trial, Shaw must produce his doctor to testify to his claimed incapacity. Shaw appeared on November 17, but claimed that he was not fit to proceed. He did not bring his doctor to testify; his doctor later stated that he spoke with the trial judge's clerk and was told that he would be called by the clerk if he needed to appear. The trial court dismissed Randy's case with prejudice. John and Gary then moved for case evaluation sanctions, citing MCR 2.403(O)(2); they argued that they prevailed due to a favorable judgment that "entered as a result of a ruling on a motion after rejection of the case evaluation." The trial court agreed, and the Court of Appeals later affirmed in an unpublished opinion. The trial judge's decision to dismiss the appeal was within the range of principled outcomes, the Court of Appeals said. "At the time of dismissal, there already existed a substantial history of deliberate delay. . . . Any sanction less

than dismissal would not have been useful, merely prolonging the sluggish evolution of this case and allowing the costs of litigation to mount," the panel stated. The trial court properly awarded case evaluation sanctions, the Court of Appeals concluded, "because an order of dismissal has the same practical effect as a verdict of no cause of action, and should therefore be treated as such." The plaintiff appeals.

Wednesday, March 5
Morning Session

SIDUN v WAYNE COUNTY TREASURER (case no. 131905)
Attorneys for plaintiff Stella Sidun: John T. Hermann/(248) 591-2300, Deepak Gupta/(202) 588-1000
Attorneys for defendant Wayne County Treasurer: Mary Massaron Ross/(313) 983-4801, Jacob S. Ghannam/(313) 224-6671
Attorney for amicus curiae Michigan Department of Treasury: Kevin T. Smith/(517) 373-3203
Trial court: Ingham County Circuit Court
Link to briefs:
http://www.courts.michigan.gov/supremecourt/Clerk/03-08/131905/131905-Index.htm
At issue: The plaintiff and her mother owned a rental house in Hamtramck, but each lived in separate houses elsewhere. All tax communications were sent to the mother's address. After the mother moved, several property tax notices were returned to sender, and the defendant county treasurer eventually foreclosed on and sold the Hamtramck house. No notice was sent to the plaintiff's address, which was shown on a quit claim deed that the defendant discovered during a title search it conducted as part of the foreclosure process. Did the defendant's efforts to provide notice satisfy due process, in light of *Jones v Flowers*, 547 US 220; 126 S Ct 1708; 164 L Ed 2d 415 (2006)?
Background: This case involves a rental house in Hamtramck. Owner Helen Krist paid all expenses connected with the property, including real estate taxes owed to the city of Hamtramck. Tax notices were sent to Krist's Warren address, which was on file with the city assessor. In 1979, Krist executed a quitclaim deed to herself and to her daughter, Stella Sidun, as joint tenants with a right of survivorship. The deed was recorded. Although neither the Wayne County Treasurer nor the Hamtramck assessor was given a copy of the deed, the Hamtramck assessor's records were updated to show that both Krist and Sidun were owners of the Hamtramck property. The deed lists both Krist's Warren address and Sidun's Birmingham address. In the late 1990s, Krist became ill. She sold her Warren house and moved to Birmingham to live with Sidun, where she resided until her death on January 1, 2003. The city of Hamtramck was not informed that Krist no longer lived at the Warren address, and the tax bills for the Hamtramck property continued to be sent there. The tax bills for the years 2000 and 2001 were returned to sender, and the taxes went unpaid. Delinquency notices were sent to Krist's former Warren address; these notices were also returned to sender. The property was forfeited on March 1, 2002, for failure to pay $2,066.45 in taxes. On June 14, 2002, the Wayne County Treasurer filed a petition to foreclose the property, under the General Property Tax Act (GPTA), MCL 211.78 *et seq*. As required by the statute, the treasurer conducted a title search to identify "owners of a property interest in the property" and apparently discovered the deed identifying Sidun and Krist as co-owners. Foreclosure notices were sent to Krist at the Warren address and were returned

unclaimed. The treasurer sent a notice to Sidun as well, but that notice was also sent to the Warren address and Sidun did not respond to it. No notice was sent to Sidun at her house in Birmingham. As required by the property tax statute, an agent of the treasurer personally visited the Hamtramck property but was unable to contact anyone, and he posted notice of the pending foreclosure. In addition, the treasurer mailed a notice addressed to the "occupant" of the Hamtramck property. Finally, the treasurer published notice three times in a local newspaper. Sidun and her husband claimed that they never received any of these notices. Sidun did not participate in the foreclosure proceedings, and a judgment of foreclosure was entered by the trial court on March 10, 2003. Sidun's rights were fully extinguished when the redemption period expired 21 days later, on March 31, 2003. The property was eventually sold on December 30, 2003, following a public auction. Sidun sued the treasurer for money damages in the Court of Claims on December 23, 2004. But the circuit judge granted summary disposition in favor of the treasurer and dismissed Sidun's suit. The judge found that the treasurer's efforts to serve notice of the forfeiture were "reasonably calculated" to provide notice under the circumstances of the case and satisfied the minimum requirements of due process. The Court of Appeals affirmed in a 2-1 unpublished opinion. A dissenting judge thought that the treasurer had satisfied due process with regard to Krist, but not with regard to Sidun, an owner of record who was separately entitled to notice. Sidun then appealed to the Supreme Court. The Supreme Court remanded the case to the Court of Appeals for reconsideration in light of the United States Supreme Court's decision in *Jones v Flowers*, 547 US ___; 126 S Ct 1708; 164 L Ed 2d 415 (2006). In *Jones*, the United States Supreme Court held that a governmental agency could not foreclose property because of a tax arrearage because the agency did not satisfy due process; after notices sent by certified mail were returned unclaimed, the agency did not take additional steps to notify the property owner, the Court stated. On remand, the Michigan Court of Appeals panel reconsidered the case and, in an unpublished opinion, reached the same result. The majority, adopting its previous opinion, concluded that *Jones v Flowers* did not change the outcome, due to the additional steps that the Wayne County treasurer took to provide notice. Sidun appeals.

MICHIGAN FEDERATION OF TEACHERS AND SCHOOL RELATED PERSONNEL, AFT, AFL-CIO v UNIVERSITY OF MICHIGAN (case no. 133819)
Attorney for plaintiff Michigan Federation of Teachers and School Related Personnel, AFT, AFL-CIO: Mark H. Cousens/(248) 355-2150
Attorney for defendant University of Michigan: Debra A. Kowich/(734) 764-0304
Attorney for amicus curiae Wayne County: Susan M. Bisio/(313) 224-8174
Attorney for amicus curiae Michigan Press Association: Katherine W. MacKenzie/(734) 416-1780
Attorney for amicus curiae Michigan State University, the Board of Trustees of Western Michigan University, Central Michigan University Board of Trustees, Saginaw Valley State University, Michigan Technological University, the Board of Trustees of Oakland University, the Board of Control of Northern Michigan University, Eastern Michigan University Board of Trustees, Wayne State University Board of Trustees, and Ferris State University: Theresa Kelley/(517) 353-3530
Trial court: Washtenaw County Circuit Court
Link to briefs:
http://www.courts.michigan.gov/supremecourt/Clerk/03-08/133819/133819-Index.htm

At issue: The Michigan Federation of Teachers and School Related Personnel, AFT, AFL-CIO, sought information under the Freedom of Information Act from the University of Michigan, including university employees' home telephone numbers and addresses. The university provided all of the requested information except for the home telephone numbers and addresses of those employees who refused to allow the information to be included in the university's faculty and staff directory. Is this information exempt under FOIA's privacy exemption?

Background: The Michigan Federation of Teachers and School Related Personnel, AFT, AFL-CIO submitted a Freedom of Information Act (MCL 15.231 *et seq.)* to the University of Michigan. The FOIA request sought each university employee's name, job title, job family, department name, work address, work telephone number, 2003 wages, compensation rate, employment record number, and employee ID, as well as the home address and telephone number. The university provided most of the requested information, but did not turn over the home addresses and telephone numbers of employees who had withheld permission to have this information published in the university faculty and staff directory. The university asserted FOIA's privacy exemption, MCL 15.243(1)(a), as a basis for its nondisclosure. MCL 15.243(1)(a) exempts from disclosure information "of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy." The union objected and sued under FOIA to obtain the information, in addition to sanctions against the university. The parties filed cross-motions for summary disposition. In support of its motion, the university submitted affidavits from various university employees describing their reasons for wishing their telephone numbers and addresses to remain undisclosed. One employee reported that she was the repeated victim of domestic violence from an estranged ex-spouse. Another reported that her three adopted children were the victims of molestation by their biological father, who vowed to find his children upon his release from prison. Other employees reported that their safety had been threatened as a result of their work for the university. Still other employees explained that they paid for unlisted numbers and had asked that their home information not be publicly disclosed. The trial court ruled in favor of the university, reasoning that the information was "of a personal nature" that would not "contribute [ ] significantly to public understanding of the operations or activities of the government." The union appealed. In an unpublished per curiam opinion, the Court of Appeals reversed the trial court's ruling and remanded the case to the trial court for further proceedings. The Court of Appeals relied on *Bradley v Saranac Board of Education*, 455 Mich 285, 294 (1997), which defined "information of a personal nature" as meaning information that reveals intimate or embarrassing details of an individual's private life. Under *Bradley*, the standard is to be evaluated in terms of the "customs, mores, or ordinary views of the community." The appeals court reasoned that the home addresses and telephone numbers were not items of personal information under FOIA because they did not reveal "intimate or embarrassing details of an individual's private life." However, the university persuasively argued that the disclosing the information could expose some employees to threats, harm and peril, the panel said. Therefore, the Court of Appeals charged the trial court on remand to determine whether any of the university's employees demonstrated "truly exceptional circumstances" to exempt information regarding their home addresses and telephone numbers from FOIA disclosure. One judge concurred in the decision, but asked the Supreme Court to consider revisiting *Bradley*'s definition of "information of a personal nature." The concurring judge also stated that, even if the *Bradley* standard were not modified, it would be appropriate to consider whether the advent of the national Do-Not-Call Registry, as well as the rise of identity theft, should have an impact on whether the disclosure of home addresses and phone numbers is

inconsistent with the "customs, mores, or ordinary views of the community." The university appeals.

SBC MICHIGAN v MICHIGAN PUBLIC SERVICE COMMISSION (case nos. 134493, 134500)
Attorneys for plaintiff SBC Michigan: Jeffery V. Stuckey, Phillip J. DeRosier/(517) 371-1730
Attorneys for defendant Michigan Public Service Commission: Thomas L. Casey, Michael A. Nickerson/(517) 241-6680
Attorney for amicus curiae Mackinac Center for Public Policy: Patrick J. Wright/(989) 631-0900
Attorneys for amicus curiae State Bar of Michigan Administrative Law Section: Stephen J. Gobbo, Kimberly A. Breitmeyer/(517) 604-0157
Attorney for amicus curiae Telecommunications Association of Michigan: Sherri A. Wellman/(517) 487-2070
Tribunal: Michigan Public Service Commission
Link to briefs:
http://www.courts.michigan.gov/supremecourt/Clerk/03-08/134493/134493-Index.htm
At issue: At issue are the Michigan Public Service Commission's regulatory efforts regarding the service fees SBC Michigan charges when it receives a customer call about service interruptions. What legal framework should appellate courts apply to determine the degree of deference due an administrative agency in its interpretation of a statute within its purview? Did the Court of Appeals err in deferring to the Michigan Public Service Commission's interpretation of MCL 484.2502(1)(a)? Did the Commission abuse its discretion in applying this statutory provision to a carrier's diagnostic mistakes? Did the Court of Appeals err in holding that the Commission lacks the jurisdiction to prohibit the imposition of a fee for a carrier's inspection of its own services when that inspection eliminates the carrier as the cause of a service disruption?
Background: An SBC Michigan customer reported a loss in telephone service at his home. The customer was told that, if the problem was found to be in the home's wiring, he would be charged a $71 service fee. A service technician went to the customer's home and determined, without entering the house, that the problem rested with the inside wiring. The technician informed the customer that the $71 fee would be charged. But after further investigation, it was determined that the problem was actually in the carrier's outside lines. The problem was fixed and the $71 fee was removed from the customer's bill. The customer was given five days' credit for lost service. The customer filed a complaint with the Michigan Public Service Commission. An administrative law judge recommended that the complaint be dismissed, but the Commission concluded that SBC violated MCL 484.2502(1)(a) of the Michigan Telecommunications Act, which prohibits a telecommunications carrier from making "a statement or representation, including the omission of material information, regarding the rates, terms, or conditions of providing a telecommunication service that is false, misleading, or deceptive." The Commission fined SBC $30,000 and ordered restitution of $1,782. In addition, the Commission directed SBC to not assess the $71 fee against any customer, unless SBC could identify the source of a service problem, had entered the customer's premises, and confirmed that the problem was located within the residence. In an unpublished per curiam opinion, the Court of Appeals indicated that, had they been members of the Commission, they would have concluded that the carrier did *not* violate § 502(1)(a). The statute's plain language would indicate that "this provision is not intended to proscribe a statement that is simply not true or correct, but is only intended to

proscribe those statements tending to deceive or mislead," the Court of Appeals said. The evidence did not show that the carrier intended to mislead, the appellate panel stated; rather, the technician's initial opinion was nothing "more than a mistake" caused by a service problem that "was intermittent, and difficult to diagnose." Nevertheless, the Court of Appeals found "no error" in the Commission's contrary ruling, saying that the court could not substitute its judgment for the Commission's. The Court of Appeals remanded the case to the Commission for further proceedings, instructing the Commission to determine whether there was a systemic problem with SBC's charges for service visits. On remand, the Commission clarified the circumstances under which SBC could charge a service fee, stating that "SBC need not enter a customer's premises *every* time that SBC is called upon to make a service trip. . . . [But] SBC may not charge its customers for the cost of services it provides to inspect, diagnose, and repair malfunctions covered by its tariff obligation, including routine physical checks of its own facilities, in response to complaints or inquiries, when reasonably necessary to diagnose and pinpoint problems attributable to its own network or exclude its facilities as a possible cause of disruptions to customer service." SBC again appealed, contending that the Commission's order inappropriately precluded it from charging customers for non-regulated services pertaining to problems with the customers' own inside wiring. In a published opinion, the Court of Appeals affirmed the Commission's order in part, upholding the provision restricting SBC from imposing charges on customers for services "to diagnose problems attributable to its own facilities." But the panel also ruled that the Commission could not restrict SBC's ability to charge for investigation of its own services, to the extent that the investigation confirms that the source of a service problem rests with the customer. In addition, competent, material and substantial evidence supported the Commission's determination that there was a systemic problem with SBC's practices regarding service visit charges, the appellate panel said. The Court of Appeals remanded the case to the Commission for entry of a modified order removing any regulation of costs and services "attributable to a correct determination by SBC that a problem with telephone service is attributable to a customer's nonregulated inside wiring." Both parties appeal to the Supreme Court.

Afternoon Session

PEOPLE v OSANTOWSKI (case no. 134244)
Prosecuting attorney: Joshua D. Abbott/(586) 469-5350
Attorney for defendant Andrew Paul Osantowski: Marla R. McCowan/(313) 256-9833
Trial court: Macomb County Circuit Court
Link to briefs:
http://www.courts.michigan.gov/supremecourt/Clerk/03-08/134244/134244-Index.htm
At issue: In sentencing criminal defendants, trial courts use statutory "offense variables," which assign a number of points based on various factors in the crime; the number of points is used to determine the length of the sentence. Offense Variable 20 (Terrorism), MCL 777.49a, requires 100 points to be assessed if the "offender committed an act of terrorism by using or threatening to use . . . [an] incendiary device, or explosive device." Under MCL 777.49a, must the threat *itself* constitute an "act of terrorism," as defined by MCL 750.543b, in order for 100 points to be assessed under OV 20?
Background: In a series of instant messages to an out-of-state girl, Andrew Paul Osantowski made a number of statements indicating he was planning a violent rampage at his Detroit-area

high school. The girl's father, a police officer, forwarded print copies of the messages to Michigan authorities. The Clinton Township police executed a search warrant at the Osantowski's parents' home, and found the weapons that Osantowski referred to in the instant messages, including an AK-47, 14 40-round magazines of ammunition, two shotguns, and over 1,000 rounds of shotgun ammunition, along with propane containers, ammonium nitrate, cans of "sterno," six knives, and pipes in various stages of assembly for pipe bombs. Osantowski was convicted by a jury of making a false report or threat of terrorism, using a computer to commit a crime, and felony firearm. He was sentenced to two and a half to 20 years in prison on the predicate charges, consecutive to a mandatory two-year prison sentence for the felony firearm conviction. Osantowski appealed by right, and the prosecution cross-appealed the sentence, arguing that the trial court erred by failing to assess 100 points for Offense Variable 20 of the statutory guidelines. MCL 777.49a, requires 100 points to be assessed under OV 20 if the "offender committed an act of terrorism by using or threatening to use . . . [an] incendiary device, or explosive device." In a published opinion, the Court of Appeals affirmed Osantowski's convictions but remanded the case to the trial court for resentencing. For purposes of scoring OV 20, an "act of terrorism" includes not only overt acts, but also threats to engage in the prohibited acts, the Court of Appeals held. Osantowski appeals.

Thursday, March 6
Morning Session Only

HERMAN, et al. v COUNTY OF BERRIEN (case no. 134097)
Attorneys for plaintiffs Joe Herman, Sue Herman, Jay Jollay, Sarah Jollay, Jerry Jollay, Neal Kreitner, Tony Peterson, Liz Peterson, Randy Bjorge, Annette Bjorge, and Tina Buck: Gregory G. Timmer/(616) 235-3500, Mark A. Westrate/(269) 782-5144
Attorney for defendant County of Berrien: Michael B. Ortega/(269) 388-7600
Attorney for amicus curiae Michigan Townships Association and Michigan Municipal League: John H. Bauckham/(269) 382-4500
Trial court: Berrien County Circuit Court
Link to briefs:
http://www.courts.michigan.gov/supremecourt/Clerk/03-08/134097/134097-Index.htm
At issue: A group of land owners sued to prevent the county from constructing shooting ranges for use in training police officers. Is the county entitled to summary disposition? Does the County Commissioners Act, MCL 46.11, preempt the Township Zoning Act when the two conflict? Does the County Commissioners Act preempt township ordinances that would regulate the use and operation of ancillary physical improvements to the site of a county building?
Background: In March 2005, Berrien County entered into a 20-year lease with Landfill Management Company for a 14-acre parcel in Coloma Township. The county proposed to construct four outdoor shooting ranges for use by county law enforcement agencies, as well as a training facility building. Shooting ranges are not a permitted use for this property, which is zoned as a primary agricultural district under the Coloma Township ordinance. Gun clubs are permitted only if a special land use permit is issued by the township board, and the township anti-noise ordinance applies to this property. Under that ordinance, the volume of permitted noise ranges from 65 decibels between 7:00 a.m., and 10:00 p.m., to 55 decibels at all other times. The ordinance also prohibits the operation of mechanical devices in a manner that disturbs the "quiet, comfort, or repose of any person." The plaintiffs own property near the proposed

shooting ranges. According to the county's own feasibility study, approximately 370 surrounding acres, 200 of which are privately owned, would fall within the peak noise level contours from the range, which would exceed 87 decibels. Proponents argue that the firing ranges are necessary for proper law enforcement training, because indoor ranges do not mimic the real-life experiences that officers encounter in the field. Opponents argue that the shooting ranges pose a danger to nearby inhabitants, and that the ranges will cause a significant decline in nearby property values. The Coloma Township Board unanimously agreed not to support the project, but the County Board of Commissioners approved it; the landowners sued. The plaintiffs argued that the shooting ranges are subject to the township's zoning ordinance, that they constitute a nuisance per se, and that their operation would violate the township's anti-noise ordinance. The trial court ruled in the county's favor, holding that the county's power to site buildings takes priority over the township's zoning. The Court of Appeals affirmed in a published split decision. The landowners appeal.

WILLER v TITAN INSURANCE COMPANY (case no. 133596)
Attorney for plaintiff Fern Willer: Paul R. Swanson/(313) 963-1234
Attorney for defendant Titan Insurance Company: Daniel T. Rizzo/(248) 269-7040
Trial court: Wayne County Circuit Court
Link to briefs:
http://www.courts.michigan.gov/supremecourt/Clerk/03-08/133596/133596-Index.htm
At issue: While she was scraping snow off her car windshield, the plaintiff slipped and fell on ice in her driveway, allegedly suffering injuries. Her no-fault insurer denied her claim for benefits, based on the parked-vehicle exclusion in MCL 500.3106(1). The trial court denied the insurer's motion for summary disposition, ruling that the plaintiff was engaged in "maintenance" of her vehicle as a motor vehicle within the meaning of MCL 500.3105(1). Is the plaintiff entitled to no-fault benefits?
Background: Fern Willer slipped and fell on ice in her driveway while she was scraping snow off her vehicle's windshield. Willer sued her no-fault insurer, Titan Insurance Company, claiming that she was injured in the fall and seeking personal protection, wage loss, and medical benefits under her no-fault policy. Titan moved to dismiss the suit, arguing that Willer was not entitled to no-fault benefits as a result of the parked-vehicle exclusion to no-fault first party coverage, MCL 500.3106. Willer was not involved in maintenance of her vehicle at the time of her injury, Titan contended, and there was an insufficient causal connection between her cleaning the vehicle's windshield and her slip and fall. Willer responded that she was entitled to benefits because her injury arose out of the "operation, maintenance, or use of the motor vehicle as a motor vehicle" under MCL 500.3105(1). The trial court denied Titan's motion for summary disposition, concluding that Willer was engaged in maintenance of her motor vehicle when she was injured, and that she was therefore entitled to seek no-fault benefits. The Court of Appeals denied Titan's application for leave to appeal. Titan appeals to the Supreme Court.

DIMMITT & OWENS FINANCIAL, INC., et al. v DELOITTE & TOUCHE (ISC), L.L.C., et al. (case no. 134087)
Attorneys for plaintiffs Dimmitt & Owens Financial, Inc., and JMM Noteholder Representative, L.L.C.: Peter L. Arvant/(248) 641-9955, Eric A. Parzianello/(248) 932-1101

Attorney for defendants Deloitte & Touche (ISC), L.L.C., Deloitte Services Limited Partnership, a/k/a Deloitte & Touche, L.L.P., and Philip Jennings: John P. Jacobs/(313) 965-1900
Attorney for amicus curiae Michigan Association of Certified Public Accountants: Ernest R. Bazzana/(313) 983-4798
Trial court: Wayne County Circuit Court
Link to briefs:
http://www.courts.michigan.gov/supremecourt/Clerk/03-08/134087/134087-Index.htm
At issue: In this accounting malpractice and breach of contract case, the parties disagree on where the "original injury" occurred for purposes of determining where venue is proper pursuant to MCL 600.1629(1). Assuming that the defendants breached their contract with the plaintiffs to review the plaintiffs' financial statements, what "original injury" did the plaintiffs suffer as a result of that breach, under MCL 600.1629(1), and where did the plaintiffs suffer that injury? Is the record below is sufficiently developed to make such a determination?
Background: Dimmitt & Owens Financial, Inc. and JMM Noteholder Representative, L.L.C. sued Deloitte & Touche and Philip Jennings, a Deloitte & Touche partner, for accounting malpractice and breach of contract in connection with the accounting firm's external audit of Dimmitt's financial reports. The plaintiffs filed suit in Wayne County, where Deloitte is located. The defendants filed a motion to change venue to Oakland County, where Dimmitt and JMM were located, and where Deloitte performed its work for Dimmitt. The circuit court denied the defendants' motion. The Court of Appeals reversed in a published opinion, ruling that venue was appropriate in Oakland County pursuant to MCL 600.1629(1). MCL 600.1629(1) states in part that a tort action may be brought in the "county in which the original injury occurred" and in which the defendant "resides, has a place of business, or conducts business . . . ." The Court of Appeals held "that defendants' alleged negligence in collecting and analyzing the data and information presented only the potential for future injury, but plaintiffs suffered the original injury when they relied on defendants' allegedly faulty information in making investment decisions. The alleged damages flowed from this original injury, which occurred at Dimmitt's place of business in Oakland County. Therefore, venue is proper in Oakland County." The plaintiffs appeal.

-- MSC --